

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

|                      |   |                                         |
|----------------------|---|-----------------------------------------|
| Karim S. Mateen,     | ) |                                         |
|                      | ) | Civil Action No. 8:05-3401-MBS-BHH      |
| Plaintiff,           | ) |                                         |
|                      | ) |                                         |
| v.                   | ) | <b><u>REPORT AND RECOMMENDATION</u></b> |
|                      | ) | <b><u>OF MAGISTRATE JUDGE</u></b>       |
| Felicia Boatwright,  | ) |                                         |
| Correctional Officer | ) |                                         |
| FCI-Estill,          | ) |                                         |
|                      | ) |                                         |
| Defendant.           | ) |                                         |
| _____                | ) |                                         |

The plaintiff, a federal prisoner proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. This matter is before the Court on the plaintiff's motion to dismiss his complaint.

The plaintiff brought this action on August 1, 2005, seeking damages for alleged civil rights violations. In his complaint, the plaintiff raises claims arising out of a sexual relationship he had with defendant Felicia Boatwright, a guard, while he was housed in FCI-Estill. On October 17, 2006, the United States District Court granted the originally named defendants the United States and the Bureau of Prisons ("BOP") summary judgment. The remaining defendant Boatwright was served On November 20, 2006, and was recently granted an extension until March 23, 2007, within which to file her answer.

On February 20, 2007, the plaintiff filed this motion to dismiss without prejudice stating that he believes the United States and the BOP "should be answering for the injury and damage induced." (Mot. to Dismiss at 1.) He states he intends to "simply pursue Tort

and Lien remedies” against them. (*Id.*)

It is readily apparent that the plaintiff is seeking a voluntary dismissal of this action and, as the defendant Boatwright has not answered the complaint, the motion should be treated as a voluntary dismissal without prejudice under Fed.R.Civ.P. 41(a)(1). Rule 41(a)(1) allows a plaintiff to dismiss his complaint without prejudice and without the permission of either the adverse party or the court at any time before the defendant files an answer or a motion for summary judgment. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394-95 (1990). Hence, the above-captioned case should be dismissed without prejudice under Fed.R.Civ.P. 41(a)(1).

#### **CONCLUSION AND RECOMMENDATION**

Based on the foregoing, the plaintiff’s motion to dismiss should be GRANTED and the case DISMISSED without prejudice.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks  
United States Magistrate Judge

March 6, 2007  
Greenville, South Carolina

**The plaintiff’s attention is directed to the important notice on the next page.**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 10768  
Greenville, South Carolina 29603

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4<sup>th</sup> Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4<sup>th</sup> Cir. 1985).